

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 ABDULLAH ASADI, *
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 Complainant, *
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 v. *
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 President, UNIVERSITY OF *
 WISCONSIN SYSTEM (Platteville), *
 *
 Respondent. *
 *
 Case No. 85-0058-PC-ER *
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INTERIM
 DECISION
 AND
 ORDER

This matter is before the examiner on the complainant's motion to compel discovery. The parties have filed briefs.

This case arises from a complaint alleging national origin discrimination filed with the Commission on April 24, 1985. The complaint included the following narrative:

I am a male whose national origin is Iran. I was offered a tenure track position as an assistant professor at the University of Wisconsin-Platteville in a letter dated August 12, 1982. Classes were to begin on August 22, by which time I was to have moved to Wisconsin, found a place to live, and prepared myself to teach a strenuous class load. At the time of my interview, I was told that my class load would equal that of the other members of the engineering faculty. However, when I accepted my contract, I was given six different courses plus two labs to be taught during one year. When I compared my class schedule to those of other members of the engineering faculty, I was very surprised to see how heavy my load was in comparison to theirs. Furthermore, this was the first time I had taught any of these courses and was expected to do so in an unstable and disorganized department.

Even with this heavy class load and the responsibilities which went with my position, I performed my duties to the best of my abilities, devoting much extra time to the preparation of classes and labs. On February 23, 1983, the College Rank, Salary and Tenure Committee recommended that I be hired for another year, and in their letter mentioned that my recommendations from faculty and students had been most positive. However, I was not offered a raise at that time, nor at any time during the course of my employment. With two professors in the I.E. department and about 150 students enrolled in the program, I was teaching most of the required I.E. courses for the duration of my

employment. During that time, 100% of the graduates from the program have been employed in I.E. positions.

In my second year, a third I.E. faculty member was hired, supposedly to reduce the teaching load on the existing faculty. However, this new professor was given a light load and allowed to teach the same courses both first and second semesters, while my class load was actually increased. I was given another class and another lab, and required to teach different classes both semesters. This new faculty member was and is unusually friendly with administration.

On December 21, 1983, a petition was filed on my behalf with the Immigration and Naturalization Service in Milwaukee for the purpose of establishing permanent resident status with the U.W. Government. Questions #22 and #23 on that form ask, "Will beneficiary be employed at above address?" and, "Do you desire and intend to employ the beneficiary?" The answers to both questions were positive.

During my second year, I worked as hard or harder than I had in my first, but due to incidents in the Middle East, particularly the bombing of the U.S. Embassy in Beirut, Lebanon, in which Iranians were suspected of participating, attitudes of my students and my chairman changed dramatically. Therefore, I was given low marks on my evaluations, as were other members of the faculty who were Iranian. My contract was terminated on December 1, 1983 by the CRST committee as a result of these evaluations.

During this time, the I.E. department chairman was having difficulties with the dean of the college, and his treatment of me reflected this. He resigned soon afterwards. I asked the CRST Committee to reconsider the decision. They were surprised to learn how many courses I was teaching compared to the other members of the I.E. faculty. After they reevaluated the situation, I was reappointed but because the former chairman would not reverse his decision, the CRST Committee terminated me on January 19, 1984 without cause.

Since that time, the I.E. department has had two new chairmen. Both of them have indicated to me in conversations that they feel I have not been treated fairly. In fact, the current chairman offered to extend my contract on November 15, 1984, verbally. However in his letter dated November 30, he had apparently succ[u]mbed to pressure, as no offer was presented. In this letter, the chairman stated my continued employment would be harmful to the department, as he did not see me as a permanent employee. This came as a surprise to me, to say the least, as a tenure track position is certainly as permanent as can be expected. He acted this way due to the influence of the former chairman, whose decision, I suppose, he felt obligated to respect.

I have had several subsequent conversations with this man, trying to find a more accurate reason for the decision not to renew my contract. On February 18, 1985, he sent me a letter outlining five causes for the decision.

During the three years I was employed at UW-P, I was never offered summer courses to teach, while others who were

Americans were. There are two other cases with similar situations involving foreigners who are on the faculty at UW-P.

I would like my position restored under the original contract and to be made whole.

An initial determination of "no probable cause" was issued on September 11, 1986. On October 8, 1986, the complainant filed an amendment to his complaint, alleging Fair Employment Act retaliation. The amendment included the following explanatory statement:

I was offered a contract on April 30, 1985, before the University rec[ei]ved notice of my complaint, by Dean Ross McDonald. When the University rec[ei]ved notice from the State Personnel Commission, they retaliated against me by not honoring that contract.

This case has followed a tortuous path since that time, as outlined in the "Examiner's Ruling on Request for Substitution" issued on September 13, 1991. The complainant appears *pro se*.

On March 19, 1991, the complainant filed a "Supplemental Discovery Request" in which he requested the following:

- the complete unedited files of the Department Review Body (DRB)
- the complete unedited files of the College Rank, Salary, Tenure (CRST)
- the complete unedited files of the University Rank, Salary, Tenure (URST)
- academic transcripts of faculty and academic staff
- personnel files of faculty and academic staff
- progress reports of faculty and academic staff
- student evaluations and comments of faculty and academic staff
- chairman and supervisor (director) evaluations of faculty and academic staff
- department evaluations of faculty and academic staff
- college evaluations of faculty and academic staff
- university evaluations of faculty and academic staff

Also, I request any and all memos, letters, briefs and notes regarding hiring, termination, merit raises, promotions, demotions, summer hiring, nonrenewal of contracts, renewal of contracts, causes for nonrenewal or renewal, distribution of funds among faculty and academic staff, methods of giving raises to faculty and academic staff, methods of evaluation of faculty and academic staff, methods of grading students, methods of teaching students, ABET (American Board of Engineering Technology) requirements

in each department, conditions of nonrenewal of contracts of faculty and academic staff, conditions for renewal of contracts of faculty and academic staff, conditions for appeal of nonrenewal, regulations for hiring and termination of minorities at the university, regulations for summer teaching, regulations for hiring new faculty and academic staff, regulations for faculty and academic staffs' teaching loads, conditions or regulations of employment for faculty or academic staff who are completing their PhD's, and lists of courses and labs taught by each engineering faculty or academic staff member since April, 1980. I also need to look at my former students' files for the academic years 1982-83, 1983-84, 1984-85

The respondent replied to the request by letter dated June 5, 1991. In their reply, the respondent referred to various materials already provided to the complainant as part of earlier discovery requests. Even though the respondent did not expressly refuse all aspects of the complainant's request, the net effect of respondent's reply was to refuse to provide additional discovery beyond that which had previously been ordered by the Commission or agreed to by the respondent.

Discovery, and more accurately disputes relating to discovery, have been ongoing in this matter since 1987. During that period, the undersigned examiner has granted discovery as to some matters, denied it as to others and, in the process, has established certain limitations on discovery. For example, in the interim decision and order issued on November 13, 1987, the examiner concluded that the complainant was entitled to discovery for the period from April of 1980 to the present and that the scope of discovery would extend to all of the UW-Platteville campus rather than to only Platteville's College of Engineering or to the entire 27 campus UW System. The previous rulings were premised upon a much more limited request than the one currently in dispute.

The standard establishing the scope of discovery is set forth in §804.01(2)(a), Stats.:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The various aspects of the new request are treated separately, below.

1 The complete unedited files of the Department Review Body (DRB)

In support of this and subsequent portions of his discovery request, the complainant relies on portions of a January 21, 1986 letter from respondent's counsel which was sent to an investigator at the Personnel Commission as part of the investigative process. The letter states, in part:

As I've noted, a probationary faculty appointment may be granted only upon an affirmative recommendation from appropriate faculty bodies and the chancellor of an institution in the UW System. At UW-P, the faculty participate in the initial and continuing appointment of probationary faculty at several levels. For initial appointments, a search and screen committee works with a department chair and a dean to select new appointments. Thereafter, for continuing appointments, the first faculty involvement is at the departmental level, where an entity known as the Departmental Review Body [DRB] acts on probationary appointments. If a DRB recommends that a probationary appointment be continued, the recommendation proceeds to a College Rank, Salary, and Tenure Committee [CRST] for its review and action. If a CRST agrees with a DRB recommendation, then the recommendation is acted upon by a University Rank, Salary and Tenure Commission [URST]. If the URST joins in a positive recommendation from a DRB and a CRST, then the recommendation is acted upon by appropriate administrative agents of the chancellor. At UW-P, therefore, a probationary faculty appointment is continued only after affirmative recommendations from three separate faculty entities and appropriate administrative officers.

In this and other correspondence, the respondent effectively concedes that the DRB has a role in matters associated with faculty evaluations and contracts, which are clearly relevant to the the instant complaint. There is no indication what other responsibilities the DRB performs. Therefore, the complainant is entitled to review UW-Platteville DRB files from the period commencing April of 1980, in their entirety. The examiner notes that in previous rulings relating to whether the complainant should have access to complete files versus being able to view individual documents, the complainant's underlying discovery request was at that time only for various documents, rather than for entire files.

2 The complete unedited files of the College Rank, Salary, Tenure (CRST)

The respondent effectively concedes that the CRST has a role in matters associated with faculty evaluations and contracts, which are clearly relevant to the the instant complaint. There is no indication what other responsibilities

the CRST performs. Therefore, the complainant is entitled to review UW-Platteville CRST files from the period commencing April of 1980, in their entirety.

3. *The complete unedited files of the University Rank, Salary, Tenure (URST)*

The respondent effectively concedes that the URST has a role in matters associated with faculty evaluations and contracts, which are clearly relevant to the instant complaint. There is no indication what other responsibilities the URST performs. Therefore, the complainant is entitled to review UW-Platteville URST files from the period commencing April of 1980, in their entirety.

4. *Academic transcripts of faculty and academic staff*

The respondent contends that the examiner has previously ruled that the complainant may not have access to academic transcripts. The examiner is unaware of any previous decision addressing this point. The respondent also notes:

Transcripts are of value when faculty are recruited and hired. After that, their value is very limited. Nevertheless, they contain very sensitive information. Mr. Asadi has presented no compelling argument to have access to that very sensitive information. Absent a compelling reason to grant his request, it should be denied.

The complainant's justification for reviewing these materials is as follows:

The November 17, 1983, letter from the Department Chairman, states, "Also, it is felt by the chairman that his undergraduate preparation in some of the basic IE subjects is less than expected." Clearly, th[e]n, my undergraduate preparation played a part in the Chairman's decision not to renew my contract. Therefore it is reasonable that I be allowed to examine faculty and academic staff members' academic transcripts to compare them with my own and see if the University was consistent in its decision making. In addition, Respond[e]nt, in his letter of February 21, 1986, states, "Long term employment at UW-P was contingent, among other things, upon completion of his PhD." This further indicates that it is reasonable for me to be allowed to examine faculty and academic staff academic transcripts to see if the University was consistent in this requirement, or if I was singled out in this regard.

The complainant has identified a basis for reviewing the academic transcripts of those faculty and academic staff at UW-Platteville whose contracts were considered for renewal during the period from April of 1980 to the present.

- 5 *Personnel files of faculty and academic staff*
6. *Progress reports of faculty and academic staff*
7. *Student evaluations and comments of faculty and academic staff*
- 8 *Chairman and supervisor (director) evaluations of faculty and academic staff*
9. *Department evaluations of faculty and academic staff*
10. *College evaluations of faculty and academic staff*
11. *University evaluations of faculty and academic staff*

In its response to the complainant's discovery request, the respondent offered the following comments regarding requests numbered 5 through 11:

We already have been providing you with access to documents in the personnel files of faculty and academic staff that deal with student evaluations, and evaluation "comments" made by instructional staff, faculty or academic staff, including evaluations by department chairs or their counterparts; departments; college level; and university level.

With the exception of providing the complainant with unlimited access to the personnel files of faculty and academic staff, the respondent has indicated that it has already been providing the complainant with these materials for the time period from April of 1980 to the present and for the Platteville campus. The complainant's apparent response is that he "should have the right to make the ultimate decision" as to what he feels is valuable to his case, and that, as a consequence, he should be able to look through entire personnel files and ignore what is unimportant. The problem with the complainant's approach is that individual personnel files contain materials relating to health and other sensitive and personal matters which are totally unrelated to the question of the performance of that individual and are unrelated to the instant complaint. The complainant's request for "personnel files of faculty and academic staff" is simply too broad. Therefore, as to the personnel files, the examiner will direct that the respondent supply the complainant with only those materials from the time period from April of 1980 to the present which relate to the Platteville campus and which relate to the issues of faculty hire, retention and evaluation. Because the respondent has indicated it is already provid-

ing the remaining materials (requests 6 through 11), no further discussion as to those requests is required.

12. *All memos, letters, briefs and notes regarding*
 - hiring*
 - termination*
 - merit raises*
 - promotions*
 - demotions*
 - summer hiring*
 - nonrenewal of contracts*
 - renewal of contracts*
 - causes for nonrenewal or renewal*
 - distribution of funds among faculty and staff*
 - methods of giving raises to faculty and academic staff*
 - methods of evaluation of faculty and academic staff*
 - methods of grading students*
 - methods of teaching students*
 - ABET (American Board of Engineering Technology) requirements*
in each department
 - conditions of nonrenewal of contracts of faculty and academic*
staff
 - conditions for renewal of contracts of faculty and academic*
staff
 - conditions for appeal of nonrenewal*
- 13 *Regulations*
 - for hiring and termination of minorities at the university*
 - for summer teaching*
 - for hiring new faculty and academic staff*
 - for faculty and academic staffs' teaching loads*
14. *Conditions or regulations of employment for faculty or academic staff*
who are completing their PhD's
- 15 *Lists of courses and labs taught by each engineering faculty or aca-*
ademic staff member since April, 1980

In its response to the complainant's discovery request, the respondent offered the following comments regarding requests numbered 12 through 15:

To the extent that the remaining materials you request are part of the contractual relationship between instructional staff and the university for the time period at issue here, you have been and will continue to be provided access to those documents that are in university files.

You have already been provided copies of procedures for summer hiring, giving raises and hiring new faculty for departments at the university that are in university files and that could be located.

ABET documents can be obtained directly from the ABET.

We do not know what you mean by "conditions of renewal of contracts for faculty and academic staff" or "conditions for an appeal of nonrenewal."

Aside from the university's affirmative action plans, there are no "regulations for hiring and termination of minorities at the university." If you do not have a copy of the university's affirmative action plans, to the extent that copies are available for the time period at issue in this case, you may have access to them.

You have already been provided extensive information concerning lists of courses and labs taught by each engineering faculty or academic staff member to the time period subject to Mr. Stege's prior Interim Orders.

If "conditions or regulations of employment for faculty or academic staff who are completing their PhD's" exist at the university, you will have to demonstrate the relationship between the request and your charge.

* * *

The university has already agreed to provide or has already provided much of what you request in the second paragraph of your Supplemental Discovery Request. You will need to justify to Mr. Stege why you have asked for the information again.

The complainant did not offer any comments or arguments regarding these requests. The examiner notes that the fact that certain materials (the ABET documents) can be obtained from another source does not provide a basis for the respondent to reject the complainant's request for them. Otherwise, the respondent has either indicated that it is willing to provide (or has already provided) the requested materials or the complainant has failed to specify a basis for his request. Therefore, to the extent the respondent has not effectively granted these requests, the complainant's motion to compel as to them is denied.

16. Former students' files for the academic years 1982-83, 1983-84, 1984-85

The respondent notes that it is unclear what the appellant intends to include with this request, but that to the extent he is requesting student evaluations (of faculty), the respondent has already agreed to provide that information. In a subsequent submission, the complainant described "student files" as "simply folders in which the University keeps materials such as applications, transcripts, letters or memos and other documents of this type relating to each individual student. It does not mean student evaluation data."

Complainant's arguments on this point are as follows:

I am also entitled to review student files. According to Respondent's statement in the letter of February 21, 1986, "Indeed, the poor evaluations of students and peers alike resulted in a decision in late Fall, 1983, not to review Mr. Asadi's appointment beyond the 1983-84 academic year." In a letter from the Department Chairman to the DRB, regarding my evaluation, the Chairman states, "Mr. Asadi has had some difficulty in relating to the students." He goes on to say that, "In some situations in classes and projects, the students express a lack of direction from Mr. Asadi. The Chairman has reservations about recommending a continuing appointment and would like to defer a final statement pending a review of this year's student and peer evaluations." These statements indicate that students and their evaluations are involved in the retention, promotion and termination of the faculty. The handwritten evaluations of the students of both Dr. Heydari and myself and the anti-Iranian message left on Dr. Heydari's computer show that in fact these students were biased at the time of their evaluations and that this played a major role in my termination. I showed these evaluations and the computer printout to Chancellor Chmurny when we met to discuss this situation and he agreed with me, saying that the students were indeed biased at that time. I intend to subpoena some of these students and their files will provide me with necessary documents.

Student records which would be found in the files being sought by the complainant are accorded special status under the Family Educational Rights and Privacy Act, commonly known as the Buckley Amendment, 20 U.S.C.A. §1232g. The complainant has failed to identify sufficient justification to entitle him to review, without restriction, all records maintained by the respondent for each one of complainant's students during the three year period of his employment at UW-Platteville. This request must be denied as being too broad. The undersigned examiner has insufficient knowledge of complainant's theory to formulate an acceptable request.

Confidentiality

The examiner notes that complainant is to maintain the confidentiality of the materials to which he is granted discovery to the extent confidentiality is required by the interim order issued in this matter on November 13, 1987, as modified on April 7, 1988:

The personnel documents which respondent provides to the complainant are to be introduced into the record of this case in a manner designed to prevent the identification of those individuals. The complainant is directed not to divulge the personnel materials beyond the extent necessary to pursue his claim. Therefore, the complainant is expressly permitted to utilize the

materials when consulting with an attorney, the Commission's staff or, as may be necessary to pursue his claim, a witness. Additional copies of the materials may only be made by the complainant as are necessary to pursue his claim. The documents are to be destroyed or returned to the respondent when they are no longer necessary to the complainant's claim.

Discovery deadlines

A significant portion of the complainant's briefs on his motion to compel relate to his request that the deadline for completion of discovery be changed from June 20, 1992 to an indefinite future date. The original discovery deadline in this matter was November 15, 1991. That date was established in a letter to the parties dated July 17, 1991. After the examiner denied the complainant's request for substitution on September 13, 1991 and the Commission affirmed that decision on January 28, 1992, the examiner issued a letter dated February 20, 1992 which established a schedule for the complainant to submit his motion to compel and for the parties to file additional written argument. The February 20th letter also provided:

The parties are to complete discovery in this matter by June 20, 1992. This means that while the complainant's motion to compel is being filed, briefed and decided, the parties should proceed with the exchange of the materials found to be discoverable in previous decisions issued by the Commission.

By letter dated March 20, 1992, a full month after the February 20th letter, the complainant wrote respondent, requesting counsel to contact the complainant by phone or in writing to indicate when discovery could be resumed. Respondent's counsel responded by letter dated April 8, 1992 in which he indicated that he needed five days advance notice of complainant's inspection visit in order to arrange for a staff member to be present.

Based upon the information available, there is no basis on which to revise the discovery deadline. Upon receipt of this decision, the complainant should telephone respondent's counsel in order to develop a schedule for completing the discovery granted by the decision. In respondent's April 8th correspondence, counsel refers to providing discovery of approximately 50 files which he had previously reviewed as a consequence of the complainant's previous discovery request. If that review was also consistent with the terms of this interim decision, discovery may commence with those 50 files.

However, upon completion, the parties should be prepared to move on quickly to other materials. If respondent counsel's previous review was not consistent with the terms of this interim decision, the 50 files will have to be rereviewed by respondent prior to any review by the complainant in order to identify all documents subject to this most recent interim decision.

Finally, it may be appropriate for the parties to consider the approach of mailing complainant copies of the requested materials in bulk. This option was identified in the November 13, 1987 order and discussed further in the April 7, 1988 order. This procedure would presumably create a massive amount of material, much of it with very limited value to the complainant and would generate significant copying costs for the complainant. However, this procedure would presumably also result in a much quicker turn-around time which has significant appeal at this stage of this case.

ORDER

The complainant's motion to compel is denied in part and granted in part, as explained above.

Dated: April 10, 1992 STATE PERSONNEL COMMISSION


KURT M. STEGE, Hearing Examiner

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